

**B R E W E R**  
ATTORNEYS & COUNSELORS

April 23, 2021

**VIA ECF**

Hon. Christian F. Hummel  
United States Magistrate Judge  
United States District Court  
James T. Foley U.S. Courthouse  
4445 Broadway, Room 441  
Albany, New York 12207

Re: *National Rifle Association of America v. Cuomo et. al*, No. 18-cv-566-TJM-CFH

Dear Judge Hummel:

On behalf of Plaintiff, the National Rifle Association of America (the “NRA”), I write in response to the letter motion by the New York Department of Financial Services (“DFS”) dated April 12, 2021 (the “DFS Letter”).<sup>1</sup> The DFS Letter takes issue with a statement regarding the claims which remain in this case, in the procedural background section of the NRA’s memorandum of law in support of its renewed motion for the Issuance of Letters Rogatory filed on April 2, 2021 (the “Hague Motion”).<sup>2</sup>

By way of background, the NRA’s Second Amended Complaint (“SAC”) lists Maria T. Vullo (“Vullo”) as a Defendant, “both individually and in her former official capacity.”<sup>3</sup> By Decision and Order dated June 1, 2020 (the “June 1, 2020 Order”), the Court substituted Linda Lacewell, the current superintendent of DFS, for Vullo in her official capacity, with regard to the NRA’s claim for injunctive relief. According to the express terms of the Court’s Order, it does not appear that Supt. Lacewell was substituted with respect to the NRA’s claim for declaratory relief.<sup>4</sup> On March 15, 2021, the Court denied Vullo’s motion to dismiss the First Amendment claims (Counts 1 and 2), but granted her motion as to the selective enforcement claim (Count 3) (the “March 15, 2021 Order”).<sup>5</sup> No mention was made in the March 15, 2021 Order regarding the NRA’s claim for declaratory relief with respect to Vullo. Further, the Court dismissed the NRA’s

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<sup>1</sup> See ECF No. 340.

<sup>2</sup> See ECF No. 331 at 4 (“the remaining claims are the First Amendment claims against Cuomo in his individual capacity, and the First Amendment claims against Vullo in her individual and official capacities.”)

<sup>3</sup> See SAC, ECF No. 203, at p. 1.

<sup>4</sup> See ECF No. 202 at 27-28 (“In the proposed second amended complaint, in requesting injunctive relief, ‘pursuant to 28 U.S.C. § 1651(a), 42 U.S.C. § 1983, and Rule 65 of the Federal Rules of Civil Procedure,’ plaintiff seeks to substitute ‘the current Superintendent of DFS (in her/his official capacity)’ for Vullo.”), citing ECF No. 154-12 at 53.

<sup>5</sup> See ECF No. 322 at 43.

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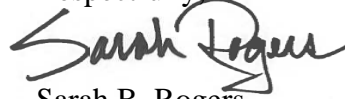
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claims in the SAC “against DFS, Gov. Cuomo in his official capacity, and Supt. Lacewell in her official capacity, including the claims for injunctive and declaratory relief [...]”<sup>6</sup>

Contrary to DFS’s rhetoric, the NRA has not asserted any claims against DFS that have been dismissed. The NRA merely wrote the disputed statement in the procedural background section of its memorandum of law in support of its Hague Motion, based on its reading of the June 1, 2020 Order and the March 15, 2021 Order which did not clearly address the NRA’s claim for declaratory relief in the SAC<sup>7</sup> asserted against Vullo both individually and in her former official capacity.<sup>8</sup> Of course, that procedural background statement has no bearing on the substance of the NRA’s arguments in support of its Hague Motion, nor was it intended to have any bearing with respect to any other part of this case.

Nevertheless, in the interest of clarity, the NRA acknowledges that no claims remain against DFS or against Vullo in her official capacity, and withdraws the statement in its memorandum of law in support of the Hague Motion that the First Amendment claims remain as against Vullo in her official capacity. Accordingly, the NRA’s current remaining claims in this case are the First Amendment claims as against Vullo in her individual capacity, and as against Cuomo in his individual capacity.

Respectfully,



Sarah B. Rogers

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<sup>6</sup> *See id.*

<sup>7</sup> *See* SAC, ECF No. 203, at Section VII (a) (“REQUEST FOR RELIEF”).

<sup>8</sup> *See id.* at p. 1.